

Title 19 Chapter 8

ENVIRONMENTAL QUALITY CODE - VOLUNTARY CLEANUP PROGRAM

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19-8-101. Title.

This chapter is known as the "Voluntary Cleanup Program."

19-8-102. Definitions.

As used in this chapter:

- (1) "Account" means the Environmental Voluntary Cleanup restricted account created under Section 19-8-103.
- (2) "Agreement" means a voluntary cleanup agreement under this chapter.
- (3) "Applicant" means the person:
 - (a) who submits an application to participate in a voluntary cleanup agreement under this chapter; or
 - (b) who enters into a voluntary cleanup agreement made under this chapter with the executive director.
- (4) "Completion" means, regarding property covered by an agreement:
 - (a) no further response actions are necessary; or
 - (b) the applicant is satisfactorily maintaining the engineering controls, remediation systems, postclosure care, and institutional controls to the extent required pursuant to the voluntary cleanup agreement.
- (5) "Contaminant" means:
 - (a) hazardous materials as defined in Section 19-6-302;
 - (b) hazardous substance as defined in Section 19-6-302;
 - (c) hazardous waste as defined in Section 19-6-102;
 - (d) hazardous waste constituent listed in 40 C.F.R. Part 261, Subpart D, or Table One, 40 C.F.R. 261.24;
 - (e) pollution as defined in Section 19-5-102;
 - (f) regulated substance as defined in Section 19-6-402; and
 - (g) solid waste as defined in Section 19-6-102.
- (6) "Environmental assessment" means the assessment described in Section 19-8-107.
- (7) "Executive director" means the executive director of the Utah Department of Environmental Quality or the executive director's representative.
- (8) "Program" means the Voluntary Environmental Cleanup Program created under this chapter.
- (9) "Response action" means the cleanup or removal of a contaminant from the environment.
- (10) "Solid waste" has the same meaning as defined in Section 19-6-102.

19-8-103. Creation of restricted account -- Purposes.

- (1) There is created within the General Fund the Environmental Voluntary Cleanup restricted account.
- (2) The account shall be used to fund department administration and oversight of voluntary cleanups initiated under this chapter.
- (3) The account may earn interest, which shall be deposited in the account, to be used for the purposes under this section.

19-8-104. Program.

- (1) There is created under this chapter and within the Department of Environmental Quality the Voluntary Environmental Cleanup Program.
- (2) The program shall be administered by the executive director.
- (3) The program shall be funded by application fees and imposed oversight costs as provided in this chapter.

19-8-105. Eligibility and exceptions -- Grounds for application rejection by executive director.

Subject to Section 19-8-106, any site is eligible for participation in the voluntary cleanup program created under this chapter except:

- (1) a treatment, storage, or disposal facility regulated under 42 U.S.C. 6901 et seq.;
- (2) that portion of a site that is on the national priorities list; or
- (3) that portion of a site for which a state or federal enforcement action is existing or pending against the applicant for remediation of the contaminants described in the application.

19-8-106. Rejection of application -- Notice to applicant -- Resubmission procedure.

- (1) The executive director may in his sole discretion reject an application prior to accepting the application fee, and return the application fee to the applicant if:
 - (a) the executive director has reason to believe that a working relationship with the applicant cannot be achieved; or
 - (b) the application site is not eligible under Section 19-8-105.
- (2) (a) The executive director may reject an application after processing the application if the executive secretary determines:
 - (i) the application is not complete or is not accurate; or
 - (ii) the applicant has not demonstrated financial capability to perform the voluntary cleanup.
- (b) The applicant is not entitled to refund of an application fee for an application rejected under this Subsection (2).

(3) An application rejected under Subsection (1) or (2) shall be promptly returned to the applicant with a letter of explanation.

(4) (a) If the executive director rejects an application because it is incomplete or inaccurate, the executive director shall, not later than 60 days after receipt of the application, provide to the applicant a list in writing of all information needed to make the application complete or accurate, as appropriate.

(b) The applicant may submit for a second time an application rejected due to inaccuracy or incompleteness without submitting an additional application fee.

19-8-107. Participation application -- Procedure.

(1) To participate in the voluntary cleanup program an applicant shall:

(a) submit to the department an application and application fee under Subsection (2); and

(b) pay to the department all costs of the department's oversight of the voluntary cleanup.

(2) An application submitted under this section shall:

(a) be on a form provided by the executive director;

(b) contain pertinent information regarding the applicant and the applicant's ability to perform the voluntary cleanup, including the applicant's financial capability;

(c) include pertinent information regarding the site, including property ownership, current property use, proposed property use, prior and present contact with regulatory programs that relate to the environmental condition of the property, and response action objectives;

(d) provide any other background information requested by the executive director;

(e) include an environmental assessment of the actual or threatened release of the contaminant at the site addressed by the application;

(f) be accompanied by an application fee as established under Section 19-8-117; and

(g) be submitted according to schedules set by department rules.

(3) The environmental assessment required under Subsection (2) shall include:

(a) a legal description of the site;

(b) a description of the physical characteristics of the site;

(c) the operational history of the site to the extent known by the applicant;

(d) information of which the applicant is aware concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, and where the contamination is located; and

(e) relevant information of which the applicant is aware concerning the potential for human and environmental exposure to contamination at the site.

(4) If the executive director accepts an application fee, the department shall take action on the application in the order in which it is received, but in all circumstances within 60 days of the receipt of the application by the department.

(5) Fees collected under this section shall be deposited in the General Fund in the Environmental Voluntary Cleanup Account created under Section 19-8-103.

19-8-108. Voluntary agreement -- Procedure and establishment.

(1) (a) Before the executive director may evaluate any detailed plan or report regarding the remediation goals and proposed methods of remediation, the applicant and the executive director shall have entered into a voluntary cleanup agreement under this chapter.

(b) The agreement shall establish the terms and conditions for the evaluation of investigation, remediation, and status reports.

(2) Before the applicant may initiate any response action covered by an agreement, a voluntary cleanup agreement shall have been signed by the applicant and the executive director, except that the applicant may take emergency measures as necessary, but shall coordinate these measures with the appropriate emergency response authorities.

(3) A voluntary cleanup agreement shall provide for:

(a) recovery by the department of all reasonable costs:

(i) incurred in the voluntary cleanup in the review and oversight of the applicant's work plan and reports and as a result of the department's field activities regarding the cleanup;

(ii) attributable to the voluntary cleanup agreement; and

(iii) in excess of the amount of fees submitted by the applicant under Section 19-8-107; and

(b) a schedule of payments by the applicant to the department, to be made by the applicant for recovery of all department costs attributable to the voluntary cleanup program, including:

(i) direct and indirect costs of overhead, salaries, equipment, and utilities;

(ii) legal, management, and support costs; and

(iii) appropriate tasks, deliverables, and schedules.

(4) A voluntary cleanup agreement shall:

(a) identify all statutes and rules with which the applicant shall comply;

(b) describe any work plan or report the applicant shall submit to the executive director for review, including a final report that provides all information necessary for the executive director to confirm that all work contemplated by the voluntary cleanup agreement has been completed;

(c) include a schedule for submitting the information required by Subsection (4)(b); and

(d) state the technical standards to be applied in evaluating the work plans and reports.

(5) If an agreement under this section is not established between the applicant and the executive director within 30 days after good faith negotiations between the parties have been initiated:

(a) the applicant or the executive director may, upon providing written notice to the other party, withdraw from the negotiations; and

(b) the applicant's application fee is not refundable.

(6) The department may not initiate an enforcement action against an applicant regarding a contamination or release, or any activity that resulted in the contamination or release if the applicant:

(a) is in compliance with this chapter regarding the contamination or release; and

(b) has entered into a voluntary cleanup agreement that is in effect under this chapter regarding the contamination or release.

19-8-109. Termination of agreement -- Cost recovery.

(1) An agreement established under this chapter may be terminated by the executive director or the applicant by giving 15 days prior notice, in writing, to the other party.

(2) (a) Only those costs incurred or obligated by the executive director prior to the date of termination of the agreement are recoverable under an agreement terminated under this section. Any unused amounts already paid by the applicant to the department as of the date of termination, other than the application fee, are refundable to the applicant.

(b) The executive director shall provide to the applicant written and itemized notification of all costs for which the applicant is liable under this Subsection (2) within 90 days after the date the agreement is terminated.

(3) If the applicant does not pay to the executive director the department's costs incurred in the voluntary cleanup within 90 days after the date the applicant receives written notice under Subsection (2)(b), the executive director may request the state attorney general to bring a court action in the name of the state to recover the amount the applicant owes under this section, and reasonable attorney's fees and court costs.

(4) Termination of an agreement under this section does not affect any right of the:

(a) executive director to recover costs under any other law; or

(b) department to take enforcement and other action as allowed by law.

19-8-110. Voluntary cleanup work plans and reports.

(1) After the applicant and the executive director have signed the voluntary cleanup agreement, the applicant shall prepare and submit the appropriate work plans and reports to the executive director as provided in the agreement.

(2) The executive director shall review and evaluate the work plans and reports for accuracy, quality, and completeness.

(3) The executive director may approve a voluntary cleanup work plan or report, or if he does not approve the work plan or a report, he shall notify the applicant in writing concerning additional information or commitments necessary to obtain approval.

(4) At any time during the evaluation of a work plan or report, the executive director may request the applicant to submit additional or corrected information.

(5) After considering the proposed future use of the property that is the subject of the agreement, the executive director may approve work plans and reports submitted under this section that do not require removal or remedy of all discharges, releases, and threatened releases on the property if the applicant's response actions under the agreement:

(a) will be completed in a manner that protects human health and the environment;

(b) will not cause, contribute to, or exacerbate discharges, releases, or threatened releases on the property that are not required to be removed or remedied under the work plan; and

(c) will not interfere with or substantially increase the costs of response actions to address any remaining discharges, releases, or threatened releases resulting from releases initially generated on the property.

19-8-111. Certificate of completion.

(1) If the executive director determines that an applicant has completed a voluntary cleanup in accordance with the agreement entered into under this chapter, the executive director shall within 30 days after the determination issue to the applicant a certificate of completion.

(2) The certificate of completion shall:

(a) acknowledge the protection from liability provided by Section 19-8-113;

(b) state the proposed future use of the property as defined under the voluntary cleanup agreement;

(c) provide a legal description of the property and identify the owner of the property; and

(d) state the applicant has complied with the voluntary cleanup agreement and has met the requirements of Sections 19-8-108 and 19-8-110.

(3) The executive director shall upon issuance of the certificate of completion record a copy in the real property records of the county in which the site is located.

19-8-112. Denial of certificate of completion -- Appeal.

(1) If the executive director determines the applicant has not successfully completed a voluntary cleanup in accordance with an agreement entered into under this chapter, the executive director shall:

(a) notify the applicant and the current owner of the property that is the subject of the agreement of the denial of a certificate of completion; and

(b) provide to the applicant a list in writing of the reasons for the denial.

(2) The applicant may appeal the determination of the executive director as provided in Title 63, Chapter 46b, Administrative Procedures Act.

19-8-113. Applicant's release from liability.

(1) (a) An applicant who is not responsible for the contaminant or contamination under the provisions listed in Subsection (1)(b) at the time the applicant applies to enter into a voluntary cleanup agreement under this chapter is released by issuance of a certificate of completion under Section 19-8-111 from all liability to the state for cleanup of property covered by the certificate and from all liability for claims arising under state law for contribution regarding matters addressed by the certificate of completion, except for any releases or consequences the applicant causes.

(b) Provisions referred to in Subsection (1)(a) are: Title 19, Chapter 5, Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act; or Title 19, Chapter 6, Part 4, Underground Storage Tank Act.

(2) There is no release from liability under this chapter if a certificate of completion is obtained by fraud, misrepresentation, or the knowing failure to disclose material information.

(3) (a) After a certificate of completion is issued under this chapter, an owner who then acquires property covered by the certificate, or a lender who then makes a loan secured by property covered by the certificate, is released from all liability to the state regarding property covered by the certificate for cleanup of contamination released before the date of the certificate, and from all liability for claims arising under state law for contribution regarding matters addressed by the certificate of completion, except under Subsection (3)(b).

(b) A release of liability under Subsection (3)(a) is not available to an owner or lender under Subsection (3)(a) who:

(i) was originally responsible for a release or contamination under Title 19, Chapter 5, Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act; or Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

(ii) changes the land use from the use specified in the certificate of completion if the changed use or uses may reasonably be expected to result in increased risks to human health or the environment; or

(iii) causes further releases on the property covered by the certification.

(c) A release under this Subsection (3) is subject to the limitations of Subsection (2).

(4) The executive director may issue enforceable written assurances to a contiguous property owner of real property stating that no enforcement action under this part may be initiated against the contiguous property owner and providing the owner protection from state law cost recovery and contribution actions.

19-8-114. Additional permits not required.

(1) Response action conducted as part of a voluntary cleanup agreement under this chapter does not require a state or local environmental permit, except as required by a program delegated to the state by the federal government under this title.

(2) The department shall by rule require that the applicant conducting the voluntary cleanup under this chapter comply with any federal or state standard, requirement, criterion, or limitation to which the response action would otherwise be subject if a permit were required.

19-8-115. Rules -- Public notice -- Participation.

The department shall make rules as necessary to administer this chapter. The rules shall include provisions for public participation by, and notice to, affected property owners regarding voluntary cleanup decisions.

19-8-116. Reservation of applicant's and department's causes of action.

(1) This chapter does not release, discharge, or in any way affect any claims, causes of action, or demands in law or equity the applicant or the department may have against any person not a party to the agreement, for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any contaminants, including transportation to or from the site covered by the agreement.

(2) Subject to Section 19-8-119, this chapter does not affect the applicant's right to seek contribution, indemnity, or any other available remedy against any party other than the department who is responsible or liable for contribution, indemnity, or otherwise for any amounts which have been or will be expended by the applicant in connection with the site.

19-8-117. Program report and budget allocations -- Fee schedule.

(1) (a) For applications submitted on or after May 5, 1997 through June 30, 1998, the application fee under this chapter is \$2,000.

(b) Regarding applications submitted on and after July 1, 1998, the executive director shall annually calculate the costs to administer the voluntary cleanup program under this chapter and shall establish the fees for the program under Section 63-38-3.2.

(2) All fees under Subsection (1) shall be deposited in the account created under Section 19-8-103.

19-8-118. Cleanups conducted prior to May 5, 1997.

(1) A person who has completed a response action prior to May 5, 1997, at a site that would have been eligible for participation in the program under this chapter, may submit an application to the executive director under Section 19-8-107 for a certificate of completion under Section 19-8-111.

(2) The application shall include information required by department rules concerning the property addressed by the application and the response action conducted at the site.

(3) The executive director and applicant shall identify in the voluntary agreement any necessary studies to be conducted by the applicant to demonstrate the cleanup has been completed as provided in Section 19-8-110.

(4) Applications submitted under this section are subject to Sections 19-8-110 through 19-8-113 to the extent those sections are applicable.

19-8-119. Apportionment or contribution.

(1) Any party who incurs costs under a voluntary agreement entered into under this part in excess of his liability may seek contribution in an action in district court from any other party who is or may be liable under Subsection 19-6-302(18) or 19-6-402(26) for the excess costs after providing written notice to any other party that the party bringing the action has entered into a voluntary agreement and will incur costs.

(2) In resolving claims made under Subsection (1), the court shall allocate costs using the standards in Subsection 19-6-310(2).

19-8-120. Creation of Brownfields Fund -- Purposes -- Loan and grant eligibility -- Loan restrictions -- Rulemaking.

(1) As used in this section, "brownfield" has the same meaning as in 42 U.S.C. Sec. 9601(39).

(2) There is created an enterprise fund known as the Brownfields Fund.

(3) The fund is created to enable the state to use federal funding as available to provide capital for a revolving loan fund and to provide funds for grants to carry out cleanup activities at brownfield sites.

(4) The sources of fund monies are:

(a) federal grant monies;

(b) principal and interest received from the repayment of loans made under this section; and

(c) all investment income derived from fund monies.

(5) The executive director may make loans and grants in accordance with this section from the fund to applicants who meet the criteria under the terms of the federal grant monies in the fund.

(6) The executive director shall consider loan and grant applications under Subsection (5) to determine whether the application meets the objectives established by the federal grant.

(7) Loans made under this section shall:

(a) be for no greater amount than allowed by the federal grant;

(b) have a fixed annual interest rate as allowed by the federal grant;

(c) have a term as allowed by the federal grant;

(d) be made on the condition the loan applicant obtains adequate security for the loan as established by administrative rules made under Subsection (9); and

(e) comply with administrative rules made under Subsection (9).

(8) Grants made under this section shall:

(a) be for no greater amount than allowed by the federal grant; and

(b) comply with administrative rules made under Subsection (9).

(9) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the executive director shall make rules establishing:

(a) form, content, and procedure for loan and grant applications;

(b) criteria and procedures for prioritizing loan and grant applications;

(c) requirements and procedures for securing loans and grants;

(d) procedures for making the loans;

(e) procedures for administering and ensuring repayment of loans, including late payment penalties; and

(f) procedures for recovering on defaulted loans.

(10) The decisions of the executive director in loaning money from the fund, making grants, and otherwise administering the fund are not subject to Title 63, Chapter 46b, Administrative Procedures Act.

(11) Funding for the cost of administration of the fund shall be consistent with the terms of the federal grant.

(12) The executive director may enter into agreements with public entities or private funding organizations to perform any task associated with administration of the fund.